

WPA 18888 of 2024

**Sk. Rabiul Hossain @ Rabiul Hossain
Vs.
The State of West Bengal & Ors.**

Mr. Arijit Chatterjee,
Mr. Kalidas Saha.

... for the Petitioner.

Mr. Amal Kr. Sen, A.G.P,
Mrs. Asima Das (Sil).
...for the State

Being aggrieved with the alleged inaction of the respondents in granting him license of LMV, pursuant to his application dated July 30, 2020, the writ petitioner has filed the instant case.

Learned Advocate appearing for the writ petitioner has submitted that the petitioner applied for license of LMV in physically differently abled category, on July 30, 2020. Along with the same, the petitioner has submitted adequate and relevant document, particularly in support of his physical disability. Learned Advocate has further stated that as per declaration made in the website of the respondent, the disability certificate issued by the government doctor in favour of the writ petitioner was accepted by the license issuing authority. He would further refer to a letter dated July 9, 2020, written by the State Commissioner For Persons With Disabilities, West Bengal, addressed to the District Magistrate and Additional Commissioner For Persons With Disabilities, Malda, requesting the recipient authority to take

appropriate action regarding allegation of the writ petitioner of not allowing LMV (4 wheeler) license, because of disability. The recipient was requested to act in terms of provisions under section 81 of the Rights of Persons With Disabilities Act, 2016.

Allegedly, in spite of all as above, the respondents are yet to issue a license in favour of the writ petitioner for LMV 4 wheeler. Hence, this writ petition is filed. Instead, the respondent has issued to the petitioner a license for MCWOG vehicle in general category.

Learned advocate for the petitioner would also say that according to the constitutional framework, the State instrumentalities are duty bound to promote welfare of the people and eliminate inequalities in status, facilities and opportunities. In this regard he would rely on a judgment of the Supreme Court reported in **2024 INSC 911 [Chaudhury Charan Singh Haryana Agricultural University, Hisar & Anr vs. Monika & Ors.]**

Learned Advocate for the petitioner would seek that necessary order be passed directing the respondents to immediately issue LMV 4 wheeler licence in favour of the writ petitioner on physically differently abled category.

Learned advocate for the State would however raise objections as to the contentions and prayer of the writ petitioner on the basis of the “*Statement of the facts*”, submitted by the Regional Transport Officer, Malda/resondent No.3. He submits that the said respondent has elaborated about the petitioner to have suppressed the relevant facts of filing other applications too, for grant of licence, in general category. He would say that the license has been granted to the petitioner in

terms of his application dated December 1, 2023 and January 5, 2024, in which the petitioner had applied for general category learner license for motorcycle without gear (MCWOG).

Learned advocate for the State has submitted that, prior to the same and in September 12, 2019, the petitioner applied for light motor vehicles license in general category. However, the said application was subsequently cancelled by him. Thereafter, on June 22, 2020, he again applied for LMV driving license on general category. On July 6, 2020, he submitted a further application for grant of new learner license, but cancelled his application afterwards. Later, on December 1, 2023 and January 5, 2024, the writ petitioner had made applications for grant of licence for motor cycle without gear (MCWOG), in general category. The respondent says that the same was granted to him in terms of order of the Director (MVL) Ministry of Road Transport and Highways, Government of India, dated May 15, 2023.

According to the respondents, grant of LMV license for 4 wheeler in general category, would not be permissible under the law in case of the present petitioner, as he belongs to the physically differently abled category. In such circumstances, the respondents seek dismissal of the writ petition.

The fact of the petitioner's having applied for licence on various occasions, is not disputed in this case. It is also not disputed that excepting once, that is on July 30, 2020, the petitioner had applied for the licence, on general category and not otherwise.

For grant of license in physically differently abled category, a person has to apply as “*Divyangjan Category*”. Admittedly the petitioner’s application for grant of LMV 4 wheeler, is not under “*Divyangjan Category*”. It has also revealed from the record that inspite of being directed by the Appellant Authority, Transport Directorate, Government of West Bengal vide order dated July 17, 2023, the writ petitioner has not applied for license as “*Divyangjan Category*”. Hence, the court finds that the petitioner’s application for grant of license is not in form.

However, the right of the writ petitioner to receive a license is undeniable in terms of the provisions of the Rights of Persons With Disabilities Act, 2016. The same is quite illuminated and manifested through the letter of the State Commissioner For Persons With Disabilities, West Bengal, addressed to the District Magistrate and Additional Commissioner For Persons With Disabilities, Malda, dated July 9, 2020. Therefore, the statutory right of the petitioner cannot be subservient to the modalities formulated for proper implementation of the right of the petitioner under the statute.

Considering the entire discussion above, this Court is inclined to dispose of this writ petition by directing as follows:

- (i) the writ petitioner shall submit a fresh application for grant of LMV 4 wheeler licence as per norms and in compliance with the proper categorisation therefor.
- (ii) the respondent No. 2 shall accept and consider the same for grant of such licence to the writ petitioner, subject to due compliance with the

statutory formalities in this regard by him. In doing so, the respondent No.2 shall ignore the earlier similar applications submitted by the petitioner under wrong category and also grant opportunity of hearing to him.

- (iii) the respondent No. 2 shall conclude the entire process as above, within a period of 3 weeks from the date of submission of application afresh, by the writ petitioner, as directed. The said respondent shall pass an order, unless the said application of the petitioner, filed afresh as per direction above, is allowed by him, showing reasons for rejection thereof.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)